

**Federal Defenders
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August 16, 2023

BY ECFHonorable Lewis A. Kaplan
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

USDS SDNY
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Re: United States v. Jey James Roldan Cardenas,
21 Cr. 359 (LAK)

Dear Judge Kaplan:

Jey James Roldan Cardenas joins the motions filed last night by his codefendant Jose Alfredo Aguas Oviedo to the extent they are applicable to him.

Like his codefendant, Mr. Roldan Cardenas was employed by the Colombian National Police ("CNP") as a rural mounted patrol officer during the time period covered by the indictment. His rank was that of a patrolman, not a major, and he had nothing to do with the Cartagena airport. But, at Aguas Oviedo's request, Mr. Roldan Cardenas met with CS-5 and pretended to be a CNP major with the ability to shepherd cocaine through the Cartagena airport. Mr. Roldan Cardenas did not intend to export cocaine to the United States; his intent was instead to assist Aguas Oviedo in effectuating the seizure of the cocaine by law enforcement in Colombia.

Mr. Roldan Cardenas therefore joins Aguas Oviedo's motions to dismiss Count Two of the Superseding Indictment and, alternatively, to compel the production of Brady material.¹ Mr. Roldan Cardenas reserves the right to seek Rule 15 depositions at a later date in the event he determines that material witnesses will be unavailable for trial.

Aguas Oviedo also filed a notice of public authority defense pursuant to Rule 12.3 for the Federal Rules of Criminal Procedure. In an abundance of caution, Mr. Roldan Cardenas hereby gives notice that he, too, understood

¹ Undersigned counsel independently sought Brady material from the government concerning Aguas Oviedo's assistance to the DEA and was informed that the government had not identified any responsive materials.

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himself to be acting on behalf of the Colombian National Police generally, and Aguas Oviedo specifically, during the time period charged in Count Two of the Superseding Indictment, *i.e.*, “from at least May 2021 up to and including in or about September 2021.”

But Rule 12.3 likely does not apply to Mr. Roldan Cardenas because he does not intend to assert an affirmative defense of public authority. “Under Second Circuit law, an actual public authority defense exists where a defendant has in fact been authorized by the government to engage in what would otherwise be illegal activity.” United States v. Giffen, 473 F.3d 30, 39 (2d Cir. 2006). A related affirmative defense, entrapment by estoppel, “can be established without the defendant having received actual authorization . . . when the government, by its own actions, induced him to do those acts and led him to rely reasonably on his belief that his actions would be lawful by reason of the government’s *seeming* authorization.” Id. at 41 (emphasis in original).

Mr. Roldan Cardenas’s defense does not depend on whether he was in fact authorized to engage in what would otherwise be illegal activity. Nor is he seeking to estop the U.S. government from prosecuting him. His defense is rather that he never joined the charged cocaine importation conspiracy because he intended to help seize the drugs in Colombia, not to help import them into the United States. Mr. Roldan Cardenas’s intent to import drugs into the United States is an essential element of the charged offense upon which the government bears the burden of proof beyond a reasonable doubt.

Respectfully submitted,

/s/

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Assistant Federal Defender
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CC: Counsel of Record

Granted.

SO ORDERED.

/s/ Lewis A. Kaplan

Lewis A. Kaplan
United States District Court Judge

Dated: August 21, 2023